

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 688 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

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STATE OF GUJARAT

Versus

MANUBHAI G CHAUHAN

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Appearance:

MR RC KODEKAR, APP for Appellant

MR HN JHALA for Respondent No. 1

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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 13/10/1999

ORAL JUDGEMENT

1. The State of Gujarat has filed this Appeal under Section 378 of the Code of Criminal Procedure, 1973, challenging the judgment and order of the learned Judicial Magistrate, First Class, Vadodara, in Criminal Case No. 859 of 1986, acquitting the respondent of the

offences punishable under Sections 323 and 354 of the Indian Penal Code.

2. Brief facts of the prosecution case as unfolded at the trial be summarised as under :

Complainant - Kailashben was residing at village Rampura along with her husband Parshottambhai Chhaganbhai Chauhan. The respondent was staying opposite to her house in the same village. On May 09, 1986, at 7.00 p.m. Complainant - Kailashben had gone to her brother-in-law's place to bring cooked vegetables. The brother-in-law of the complainant Bhailal was staying in the field, which was at a distance of three furlongs from the house of the complainant. As per the say of the complainant, around 8.00 p.m. she was returning from her brother-in-law's house after taking cooked vegetables in a bowl, the respondent intercepted her. The say of the complainant that it was a dark night and the respondent was coming on a bicycle and on seeing her, he put down his cycle on the ground and with an intention to outrage her modesty, he assaulted her. It is the say of the complainant that the respondent had put his hands on the chest of the complainant and was trying to drag her. The Complainant raised sounds. As a result, her brother-in-law - Bhailal and his wife came at the place of the incident. On hearing the shouts of the complainant, one Fatesing Mathurbhai had rushed there to rescue her. As per the version of the prosecution witnesses, the husband of the complainant also came there to rescue the complainant from the assault launched by the respondent on the complainant to outrage her modesty. On seeing so many persons coming to rescue the complainant, the respondent had run away from the place of incident.

3. The complainant lodged a complaint against the respondent at the Vadodara Rural Police Station on May 10, 1986, which was registered as CR-I 50 of 1986. The respondent came to be arrested at 1600 hours on May 10, 1986. Sub-Police Inspector of Vadodara Taluka Police Station carried out the investigation and submitted charge sheet against the respondent for the offences punishable under Sections 354 and 323 of the I.P.C. in the Court of Judicial Magistrate, First Class, Vadodara. The charge sheet was numbered as Criminal Case No. 859 of 1996. Charge Exhibit 2 was framed by the learned Judicial Magistrate, First Class, Vadodara, against the respondent, which was read over and explained to the

respondent. The respondent while pleading not guilty to the charge and claimed to be tried. To prove the case against the respondent, the prosecution examined the following witnesses :

- (i) PW1 - Complainant - Kailashben - Exh.6
- (ii) PW2 - Maganbhai Kalidas - Exh.10
- (iii) PW3 - Dhulabhai Shanabhai - Exh.11
- (iv) PW4 - Fatesing Mathurbhai - Exh.13
- (v) PW5 - Parsottam Chaganbhai - Exh.14
- (vi) PW6 - Govindbhai Bhayabhai - Exh.15

4. The prosecution has also produced documentary evidence, such as, complaint, panchnama of the scene of offence, etc. to prove the charges framed against the respondent.

5. After the prosecution case was over, the respondent was questioned generally and his statement came to be recorded under Section 313 of the Code of Criminal Procedure, 1973. In his statement, the respondent denied to have committed any offence as alleged by the complainant. However, the respondent, during his further statement, has stated that since last five years he was having an affair with the complainant Kailashben. He further stated that when the husband of the complainant came to know about the affair, he was beating her and had threatened her that she will be driven out from her house. It was stated that because of the instigation of the husband, the complainant had lodged a false complaint against him. He also stated that witnesses Maganbhai Kalidas and Fatesing Mathurbhai had deposed against him because they were having an affair with the complainant.

6. The learned Magistrate after hearing the argument of the learned advocates of both the sides, came to the conclusion that the version of the prosecution with regard to the alleged question of committing the offence of outraging the modesty of the complainant was not probable. It was further concluded that the defence of the respondent as stated in the further statement was more probable and the respondent was involved in a false case because he was having an affair with the complainant. Learned Magistrate observed that there were many contradictions and omissions in the oral testimony

of the witnesses, which were fatal to the version of the complainant. The learned Magistrate also observed that when the incident had took place, it was around 8.00 p.m. and due to darkness it was not possible for the witnesses to see the respondent at a distance of about 200 feet away. Learned Magistrate also observed that at the time of incident, there were 30 persons had gathered but, no independent witness was examined by the prosecution and all the interested witnesses were examined, whose evidence was contradictory to each other, which causes serious doubts about the manner in which the incident was said to have been committed.

7. On the basis of the above referred to conclusion, the learned Magistrate acquitted the respondent by judgment and order dated May 31, 1991, which has given rise to the filing of the present Appeal by the Appellant - State of Gujarat.

8. Learned Additional Public Prosecutor Mr. R.C.Kodekar, has taken me through the entire evidence produced on the record of this case and has submitted that the respondent had committed a serious offence of outraging the modesty of the complainant and, therefore, learned Metropolitan Magistrate ought to have taken a serious view of the offence and should have committed the respondent accordingly. It is further submitted by the

learned Addl. Public Prosecutor that the learned Magistrate had unnecessarily given importance to some minor contradictions and omissions and had acquitted the respondent on the ground that there were major contradictions and omissions in the evidence of the prosecution witnesses, which were fatal. It is stressed by the learned Addl. Public Prosecutor that the version of the complainant was most probable and the prosecution had proved its case beyond reasonable doubt and, therefore, the judgment and order of the learned Magistrate be quashed and set aside and the Appeal be allowed and the order of acquittal be converted into order of conviction.

9. Learned counsel for the respondent Mr. H.N. Jhala, on the other hand, has submitted that the Magistrate had given cogent and convincing reasons for not accepting the evidence of the prosecution witnesses.

It is submitted by the learned counsel for the respondent that the prosecution case as deposed by the witnesses was highly improbable and because of an affair between the respondent and the complainant, he was made a scapegoat and a false complaint was filed against him. It is further submitted by the learned counsel for the respondent that this being an appeal against the acquittal, this court should not interfere with the order of acquittal unless it is perverse or illegal. It is

submitted by the learned counsel for the respondent that the prosecution had failed to prove the charges levelled against the respondent beyond reasonable doubt and, therefore, the Appeal should be dismissed.

10. Normally, the court would take serious view of the offences relating to morality and assault on a woman. In the present case, serious allegations were made against the respondent for having committed an offence of outraging the modesty of the complainant - Kailashben. The version of the incident as narrated by the complainant and her witnesses was contradictory and improbable. The incident had taken place around 8.00 p.m. on May 9, 1986, whereas, the complaint was lodged on the next day. The respondent was having an affair with the complainant and, therefore, there are chances of the respondent being falsely involved in the alleged incident of outraging the modesty of the complainant. The learned Magistrate had elaborately discussed the evidence of the prosecution witnesses and had rightly pointed out that there were many major contradictions and omissions which were found in the evidence of the prosecution witnesses, which makes the case of the prosecution doubtful. At the time of incident there were 30 persons had gathered, but the prosecution did not examine any independent witnesses, which also caused a serious doubt about the manner in which the incident was alleged to have been committed by the respondent. As per the version of the complainant, the incident had taken

place when she was returning from her brother-in-law's house. It is the case of the complainant that while she was carrying a bowl of cooked vegetables in her hands, the respondent had assaulted her and had tried to outrage her modesty. It is important to note that at the time of preparing the panchnama of the scene of offence, no

utensils or bowls, in which the cooked vegetables was carried, was found there, which also cause a serious doubt that the complainant had gone her brother-in-law's place to bring cooked vegetables. The presence of the husband of the complainant has also raised serious doubt. In my view, the reasoning given by the learned Magistrate for acquitting the respondent are cogent and convincing and those reasoning cannot be said to be perverse or against the evidence on record. Therefore, I am of the opinion that the order of the acquittal cannot call for any interference in this Appeal filed by the appellant - State of Gujarat.

9. This is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Magistrate who had an advantage of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondent. Suffice to say that the learned Magistrate

has given cogent and convincing reasons for acquitting the respondent and the learned Additional Public Prosecutor had failed to dislodge the reasons given by the learned Magistrate in order to convince this court to take a view contrary to the one already taken by the learned Magistrate. Therefore, the acquittal appeal deserves to be rejected.

10. For the foregoing reasons, I do not find any substance in the Appeal. The Appeal, therefore, fails and is dismissed.

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